

**CITY OF TIGARD
PLANNING COMMISSION
DRAFT Meeting Minutes
December 14, 2015**

CALL TO ORDER

President Rogers called the meeting to order at 7:00 p.m. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

ROLL CALL

Present: President Rogers
Vice President Fitzgerald
Alt. Commissioner Enloe
Commissioner Feeney
Commissioner Lieuallen
Commissioner Middaugh
Alt. Commissioner Mooney
Commissioner Muldoon
Commissioner Schmidt

Absent: None

Staff Present: John Floyd, Associate Planner; Doreen Laughlin, Executive Assistant; Gary Pagenstecher, Associate Planner; John Floyd, Associate Planner

COMMUNICATIONS - None

CONSIDER MINUTES

December 7 Meeting Minutes: President Rogers asked if there were any additions, deletions, or corrections to the December 7 minutes; there being none, Rogers declared the minutes approved as submitted.

Before opening the public hearing, President Rogers addressed the commission about the order of the agenda. The commission agreed to change the order of the agenda to complete old business first; so it was decided to begin with the continued public hearing rather than the originally scheduled item. The Comprehensive Plan item "MEDIUM DENSITY RESIDENTIAL (R-12) PRESERVATION Comprehensive Plan Amendment (CPA) 2015-00005" would be heard afterward.

REOPEN CONTINUED PUBLIC HEARING

President Rogers reopened the continued public hearing.

HERITAGE CROSSING ZONE CHANGE AND SUBDIVISION (ALTERNATIVE PROPOSAL- CONTINUED: ZON2015-00006/SUB2015-00015/ADJ2015-00003

REQUEST: The applicant is requesting a concurrent Zoning Map Amendment, Subdivision, and Special Adjustment to street standards to develop approximately 9.10 acres located at 15435 SW Hall Boulevard. The quasi-judicial zoning map amendment would change 6.05 acres of the project site from R-12 to R-7, with no change in zoning to the remaining 3.05 acres. Associated with the application is a concurrent

request for subdivision of the site into 62 single-family lots, and a special adjustment to street standards to allow new local streets to match existing streets that adjoin the property. The applicant submitted a similar proposal earlier this year, which was indefinitely suspended by the City Council on October 20, 2015 (see file ZON2015-00002, SUB2015-00001, VAR2015-00001). **APPLICANT:** Venture Properties **LOCATION:** 15435 SW Hall Blvd **ZONES:** R-12 to R-7 **APPLICABLE REVIEW CRITERIA:** Community Development Code Chapters 18.370.020.C.9, 18.380.030.C, and 18.430.040.A; and Metro Urban Growth Management Functional Plan Title 1

STAFF REPORT

Associate Planner John Floyd read into the record the six items/letters that came in since the last hearing and gave his response to each one:

- An email from Vice President Fitzgerald dated 12/8/15 in which she requested updated letters from Metro (regarding Title 1) and the Tigard Housing Planner (both letters were provided for their information.)
- Two letters – one from TVF&R and one from ODOT – stating that neither agency had objections to the project. ODOT had a list of recommended conditions of approval should the Planning Commission decide to approve the project.
- Joint letter from the Fair Housing Council of Oregon and the Land Housing Advocates – This is significant because:
 - It supports staff recommendation of denial citing:
 - Policy 2.1.15.C-D
 - Policy 10.1.1
 - Project would “negatively impact housing choice, diversity, and affordability within Tigard.”
 - It would endanger Washington County’s ability to affirmatively further fair housing under the federal Fair Housing Act.
 - Tigard is held to this same requirement as the City receives federal money.
 - Cited the Washington County Consolidate Plan 2015-2020 regarding housing conditions.
 - Dramatic changes in poverty and vacancy rates in the last ten years due to suburbanization of poverty.
 - Incredibly tight rental market
 - Increased demand for affordable housing – both renters and homebuyers.
- Letter from Brian Harper of Metro
 - States they have withdrawn their previous objection based on Title 1
 - Also said that their change of position should not be used to settle the issue, as there remain other code and policy issues for the PC to consider.
- Updated letter from Tigard Housing Planner – Marissa Grass
 - Main Points:
 - Cited two studies that concluded affordable ownership and rental housing is of particular importance at this time.
 - Tigard has over 2.6 times the amount of buildable land zoned R-7 as compared to R-12
 - Proximity to services is relevant factors in multiple comp plan policies.
 - Issues of compatibility are false – multiple parts of the city where R-7 adjoins R-12

- Recommends project should be denied to preserve existing opportunities for needed housing with R-12 zoning.

At this point, John addressed the 76 page document package the applicant had turned in the previous week, noting that the staff report addresses most of the issues that had been raised in those documents. He said there were two parts of the recommended “Draft Findings of Fact” proposed by the applicant and presented to the City Council – specifically on page 3 of the “Draft Findings of Fact” regarding 18.390.030.B.3 – Evidence of Change in the Neighborhood that he believes are relevant:

“The area has become increasingly less dense since 1983.”

- Staff does not concur with this proposed finding (detailed on page 18 of the Staff Report)
 - Land immediately to the west was up-zoned from R-4.5 to R-7.
 - Cumulative density along northern and western boundaries actually increased in 1996 as part of Applewood Subdivision Approval

“The area that has developed around the Site has developed under low-density residential standards.”

- Both Comp Plan and TDC would define adjoining properties as “Medium-Density Residential”
- Existing zoning is similar in intensity than adjacent properties

STAFF RECOMMENDATION

Staff recommends the Planning Commission DENY the proposed zone change based on findings and evidence contained in Section V of the Staff Report.

APPLICANT’S PRESENTATION

Attorney Mike Robinson spoke on behalf of the applicant and said rather than go over the applicant presentation again that they would like to hear what the public has to say and then they would rebut both the documents that had come into the record and whatever might be said during the testimony time.

TESTIMONY IN FAVOR - None

TESTIMONY IN OPPOSITION - None

APPLICANTS REBUTTAL

Attorney Mike Robinson came up again and reminded the commissioners that when you look at it, what you’re really looking at is a difference of twelve units; that’s the difference between what was submitted before - which requested the entire site be zoned R-7 - versus the compromise application which is asking to be partly zoned R-7 with R-12 remaining adjacent to Hall Blvd.

Regarding the Metro letter – the reason the Metro letter is in the record is that Commissioner Fitzgerald asked staff to obtain a letter from Metro. In the prior application Metro had said “We don’t think the application meets Title 1.” In shorthand, the Title 1 standard is – you can change a

zoning map designation so long as it has what Title 1 refers to as a “negligible effect.” There’s no definition of that except what you would think of as the ordinary dictionary definition – “small.” So having the letter we have from Metro in the record now is helpful for this body - it now says in the first sentence of the 2nd paragraph is “We’ve reviewed the new proposal from the applicant and have decided to withdraw our previous objection.” That’s an appropriate position on Metro’s part. We’re talking about just 12 units – a negligible effect. So Metro’s concluded that this application satisfies Title 1. That’s a significant change from their position last time, and I think that’s due to the applicant’s willingness to compromise – leaving the R-12 up on Hall Blvd and putting R-7 where it belongs – adjacent to all of those single family homes with the wide lots. Please remember we’re talking about a loss of 12 dwelling units out of a total of 6,308. I think Metro is correct that it’s a negligible effect. I think this commission can make that same finding and we’d like you to make that finding.

Regarding the Fair Housing Council letter. Let me divide that letter into two parts. There’s a reference to Tigard Comp Plan Policies and I can tell you that as late as today, Ms. Bragar, who’s an attorney at Garvey Schubert, and who is one of the two authors of the letter. had not read the application. I emailed her Metro’s letter and she said to us “Would you send us the application?” So they wrote the letter without having read the application. Clearly they read the staff report, but I think before you write a letter, you really should read the application.

The letter is really divided in two parts – the plan policies that one could find by looking in the staff report – and this Washington County Consolidated Plan. That plan is not an approval criteria. It’s important for us to understand housing needs in this county, but it’s not a land use regulation, it’s not a Comprehensive Plan provision – it’s not relevant – it’s not approval criteria that you would find relevant to this kind of application. Moreover, the plan covers the entire county. Think about the big UGB expansion areas – River Terrace in this city – South Cooper Mountain in Beaverton, North Bethany in Washington County... there are literally thousands of multi-family and attached units. So to the extent that someone wants to argue, as the Fair Housing Council has done, that losing a mere 12 units by rezoning R-12 to R-7 on a portion of this site, somehow violates that plan... I think is just wrong because there are many 100’s if not 1000’s of units in these three large UGB areas that provide for multi-family and attached single-family dwelling opportunities. So even if the plan were an approval criterion, we’ve had these large expansion areas that Metro brought into the boundary in 2002 that are now being developed. Look at River Terrace. Those areas have more than added to the small lot, attached single-family and multi-family development far, far excess of the 12 units we’re talking about.

Mr. Robinson addressed the three plan policies that the Fair Housing letter referred to that were in the staff report:

Comp Plan Policy 2.1.15.C is met by the applicant because there is a need for housing in the R-7 zone. In the words of the plan policy “In this particular location.” That’s the operative factor in that plan policy. That policy is not concerned with city-wide conditions – it’s concerned with “in this particular location.”

Comp Plan Policy 2.1.15.D is met by the applicant because there’s an inadequate amount of R-7 land. Ms. Doukas’ slide presentation and the narrative demonstrates the fact that there’s more need for R-7 land here than R-12.

Comp Plan Policy 10.1.1 is frankly not an applicable standard in any kind of a development application. It is direction to the city to adopt certain kinds of codes - it's the plan's guidance for the city saying "Implement this plan a certain way." Not only does it not apply to development applications, even if it did - it doesn't refer to map amendments - and that's what's before you tonight; the map amendment.

So while we respect the good work the Fair Housing Council does, this letter doesn't offer you any reason to deny this application. The Washington County Consolidated Plan is neither an approval criterion, nor is it particularly relevant to the outcome, because it ignores the fact that we have literally hundreds of acres of new land that have come into the boundary and that are being developed with different kinds of non-large lot single family homes.

The only zones that touch and abut this site are R-5 and R-7 - not R-12. Our point is that if you look at the map, this site is abutted by R-5, which is low density. Most of the neighbors who live in R-7 would believe they're low density as well - not medium density. The only reason this piece is still R-12 is the ownership. It's only with the passing of the owner that this property came on the market. Had this property been actively developed, I think you could safely conclude that it wouldn't be R-12 today. It's the only R-12 on that side of the street - it's surrounded by either R-7 or R-5 zones.

When you voted last time, a number of you made comments about wishing the applicant had done something different and tried something else. That's why we came back - we thought this was a worthy effort to make - we don't think it's appropriate, nor is it required by the code, to put R-12 next to existing R-7 and R-5 single family zoning district developments - we think if the compromise should be made - leave the R-12 adjacent to Hall Blvd. That supports, in staff's view, the transit line on Hall - but change the rest to R-7 which results in a compatible, similar development. Your code is flexible enough to allow that. The evidence in the record supports the necessary findings that this body would need to make to approve this. We think this is an application that's well supported by the evidence, and that you can approve.

QUESTIONS

There are many places in the staff report where staff points out a policy and then feels that policy isn't met and then additionally that it couldn't be conditioned to be met. What is your reaction to that?

I could go through each policy but I can divide my responses in general into two groups. One: A number of the plan policies cited in the staff report are not applicable for one of two reasons - either they're aspirational - they use language like "should" rather than mandatory language like "shall" or, more importantly, as I cited earlier to one of the plan policies in chapter 10, they're really direction to the city about how to implement the plan. They don't have a good role in applying to development applications. In some cases, in my opinion, they simply don't apply in the way staff suggested they do. You can find, as our findings document did, that many of those plan policies simply aren't applicable, shouldn't be applicable because they're not mandatory, or simply don't apply to development applications.

The second general reason is in the case of those plan policies that do apply - you have to judge about which set of evidence that you think better implements the plan policy. We think Ms. Doukas did a very good job showing the history and why those important criteria providing for a

zone change are met. Those plan policies are satisfied by substantial evidence submitted by the applicant and that gives the Planning Commission a basis to approve the application.

You mentioned that the twelve lots are negligible – was there any thought of changing it around to actually meet the minimum lot requirement?

Mimi Doukas AKS Engineering, representing Venture, came up to address that question. The response to that has to do with how we transition those densities and how we create the community internal to the property, and what is the right way to transition that density? If we put that much of the smaller product in, it begins to change the entire character of the neighborhood – it changes the streetscape. So it really has to do with the community building within the neighborhood and the right way to transition from a market standpoint.

Mike Robinson came up and noted that if the Justice Department or a court were to look at whether the city or the county is complying with the Fair Housing Law, both state and federal, they're going to look at the totality of the situation. They'd look at whether the city has a pattern of discriminating against low-income individuals through their zoning actions. "First of all," he said, "federal law is not an approval criterion for this application, but more importantly, the totality of the circumstances in the city and county is that with all of those UGB areas, there's no possibility, in my view, that the Fair Housing Law is not satisfied in this application because it has such a de minimis effect on your zoning capacity. It wouldn't rise to the level that any responsible attorney would suggest to their governing body that a case should be brought against the city."

FINAL COMMENTS OF STAFF

Associate Planner John Floyd: Page 3 of the staff report comes down to a lot of the staff's recommendations on this. There are two tables on page three. The first is a density comparison and the second is a comparison of allowed housing types. The applicant's argument is that this is just a loss of 12 units. It's not just a matter of numbers, I could site some specific policies if you'd like but it's also a matter of location. There's a cumulative amount of services in this area that we think's also appropriate that relates to the number. That's the adjacency and proximity of schools with sidewalk connections to all the schools; it's the proximity of a small neighborhood commercial center nearby, the city library. Cumulatively these things are important. All these factors were a reason why this area was assigned to R-12 zoning back in 1983 and these locational factors haven't changed. Staff's position is that the reason the City Council applied the zoning back then is still relevant today. The applicant has also talked about a need for R-7 zoned land, without analysis of impact to housing types allowed under R-12. The analysis has been pretty one-sided in terms of the numbers. I think the application is incomplete in that regard too.

APPLICANT REBUTTAL

Mike Robinson came up and said "I could certainly go through this again, but I think we've said enough and I think you all are probably thinking you've heard enough, so I thank you for your time."

PUBLIC HEARING CLOSED

DELIBERATION ON ZONING CHANGE

There was some discussion about how difficult this decision is due to a very strong staff report but also a very strong application. They decided to focus on the zone change only at this point. The question was whether they would support the R-12 or whether they would support the application as proposed.

Some of the responses from the commissioners:

- The relatively “soft” responses from the agencies such as Metro don’t make it easy to make the decision. It’s back to the commission to decide.
- I’m torn as well, it seems like the appropriate thing to do is to maintain the current zoning based on where it is and the supply in the city for that zone. I’m leaning towards maintaining the R-12 zone.
- I’d probably agree with that. As far as River Terrace and other locations in the city being brought into the conversation... this area is for housing for people who can’t afford more expensive homes or economic values. River Terrace in my opinion as a development... there are a few little locations that are affordable but beyond that I don’t think we have enough affordable housing in Tigard and I think to change that zoning in this specific area - while some may view that the city facilities are not in proximity, but for our city they’re in good proximity to that neighborhood. I think we should remain the same zoning to help out more people.
- I’m leaning the other way. I like the idea of having the boundaries at the street and I like what’s being proposed. It’s got the lower and the higher density. I think that 12 lots is de minimis.
- I was one of the one’s that said I’d like to see something in the middle and now the applicant came back with something. The question does open up as other commissioners have mentioned is – it isn’t going to count – it’s minimal to me. But losing enough housing count – I’m really looking at that criteria as well – everyone’s referencing River Terrace. It’s also stating in there about “in a particular location” – are we talking citywide? Or are we talking in this neighborhood? That’s where I’m having a little harder time right now. Yes, the whole area was (inaudible) and rezoned, or redeveloped – now it’s a little piece. I’m definitely on the fence.
- A couple things stood out in my mind for that area. Is the bussing and walkability and diversity of housing, in that area – which is relatively exclusive. In support of this change – I don’t like thinking that the neighbors come and think they’re not heard. I do think it’s important and in our Comprehensive Plan – I believe it’s 1.1 that says there’s supposed to be public input. I think we’re supposed to take that into account and should weigh very strongly. I like this plan that came back with a compromise. Would I want my property to back up against two row-houses? Not so much. I’d want it to be a single house like mine. Also –Metro’s comment pushed me a long way to believing this is a negligible change to the inventory at this point and that they’re not opposed. That helped me get a long way towards what the neighbors and the developers are wanting.

At this point there were some questions about the two islands. One of the commissioners noted that in Mimi Doukas’ presentation, she had one of the alternates having R-12 for both islands. It was decided to reopen the hearing and ask Mimi Doukas some questions.

REOPENED THE PUBLIC HEARING

President Rogers spoke to Mimi Doukas – “So the Commission itself is looking at R-12 for both islands. Has that been a consideration or something that has been looked at before? Does this pencil out?”

Doukas – It’s more than just penciling out. It’s how the community functions and how you can bring those houses to market but from a purely logistical and density standpoint, you can’t just mirror that island over. You won’t hit the right densities with the R-12. There’s land within that right of way and the storm water facility. You can’t hit the right numbers with that exact type of product. It would push it to smaller lots or attached products. It all sort of unravels at that point. One of the commissioners showed Ms. Doukas a drawing that showed both islands with R-12. Ms. Doukas pointed out that there was also a big red box in the corner of the plan stating, “This does not meet minimum density.”

STAFF COMMENT

John Floyd said he believes there are ways the applicant could possibly modify the site plan to meet minimum density should the Planning Commission want to go with the additional island option as was being discussed. He said staff could work with the applicant to find ways to meet minimum density if that’s the route they would like to take.

Commissioner Muldoon asked if they could condition the application.

Ms. Doukas stated “If I’m hearing you right, you’re concerned about diversity of housing and adding another island is not going to add to the diversity of housing, it’s going to add a few more of a product type that we’ve already got within the community. We are providing smaller lots and we’re providing larger lots and all you’re talking about doing is changing the proportion of those. It’s still diversity of housing and you’re still providing opportunity within the region so I feel like the way that it’s currently designed, we really are already there. It’s talking about degrees.

CLOSED PUBLIC HEARING

DELIBERATION

There was more discussion as to who was for and who was against the application. It didn’t appear there was a majority. Some were for, some against.

At this point, Mike Robinson asked if he could come back on behalf of the applicant. President Rogers said he could and he reopened the public hearing.

REOPENED PUBLIC HEARING

Attorney Robinson said, “If we could be sure that staff says there are ways to meet the minimum density, we’d be happy to work with staff and I think we’d consider what you’ve been tossing around which is R-7 on the perimeter, R-12 on the islands with the condition of that. So I’m thinking if you wanted to do a motion that proposed that – provided we can do the minimum density without too difficult gymnastics to get there, that might work. I simply don’t know your code well enough – I’d have to look at it to determine what you’d need to do, but I think we’re

willing to consider. But we're talking about detached single-family lots. We don't want to do attached here. We don't think the neighbors want to see attached here. So if the motion could provide for R-7 on the perimeter, R-12 in the interior islands that you've been referring to, with the proviso that there's got to be a way to meet minimum density – because you'll get a different letter from Metro if we don't meet minimum density - I think we could be comfortable with that. But it's got to be detached lots; we're not offering attached.

John Floyd said staff would be willing to work with the applicant if the Planning Commission wants to give direction. He said he would recommend against specifying a specific number of lots – providing the applicant meets the minimum density.

President Rogers closed the public hearing.

CLOSED THE PUBLIC HEARING

MOTION ON ZONING CHANGE

Commissioner Muldoon made the following motion – “**Motion is for ZON2015-00006 as proposed but with R-12 for the second island meeting minimum density - working with staff - with detached lots.** Seconded by **Commission Middaugh**

A vote was taken.

In Favor: Commissioners Muldoon, Middaugh, and Feeney
Opposed: Commissioners Lieuallen, Fitzgerald, and Schmidt
Abstain – President Rogers

Count is 3 for, 3 against, 1 abstention

VOTE RESULTS IN A 3 -3 TIE

When questioned, the commissioners said they needed to see more before deciding.

At this point, it was decided to continue the hearing to get a revised plan which hopefully the commission would be in favor of. After looking at the calendar it was decided to continue to January 25.

President Rogers gave a summary to the applicant of what's wanted: “The commission desires to see that R-12 zoning applied to that second island – and again, minimum density requirements applied to the entire development itself.” Is that correct, Commissioners? All the commissioners agreed.

HEARING IS CONTINUED TO JANUARY 25, 2016

FIVE MINUTE RECESS

PUBLIC HEARING

MEDIUM DENSITY RESIDENTIAL (R-12) PRESERVATION Comprehensive Plan Amendment (CPA) 2015-00005; Zone Change (ZON) 2015-00007

REQUEST: The city is initiating this Comprehensive Plan and Zoning Map Amendment to facilitate preservation of R-12 zoned land and ensure it is applied in a location that supports residential use. The City proposes changing the Comprehensive Plan Designations and Zoning District Classifications of the subject parcels in **SITE A** (3 parcels totaling 1.54 acres) from Professional Commercial (C-P) to Medium Density Residential (R-12); and changing the Comprehensive Plan Designations and Zoning Map Classifications of the subject parcel in **SITE B** (1 parcel of 1.37 acres) from Medium Density Residential (R-12) to General Commercial (C-G). **APPLICANT:** City of Tigard **LOCATION:** **SITE A:** 7303 SW Spruce St., 10705 SW 72nd Ave., 10735 SW 72nd Ave; TAX MAP/ LOT #'s: [1S136AC02200](#), 1S136AC02400, 1S136AC02500; and **SITE B:** 13125 SW Pacific Hwy TAX MAP/ LOT # 2S102CB00200 **ZONES:** FROM: Medium Density Residential (R-12) and Professional Commercial (C-P) TO: General Commercial (C-G) and Medium Density Residential (R-12) **APPLICABLE REVIEW CRITERIA:** Community Development Code Chapters 18.380.020 and 18.390.060.G; Comprehensive Plan Goals 1, 2, 10; Statewide Planning Goals 1, 2, 10; and Metro's Urban Growth Management Functional Plan Title 1.

STAFF REPORT

Associate Planner, Gary Pagenstecher went over the staff report (the staff report is available for viewing and downloading on-line one week before each hearing.)

Pursuant to the City's housing goal to provide opportunities for a variety of housing types to meet the diverse housing needs of current and future City residents, the affordable housing types allowed in the R-12 zone warrant the need to preserve R-12 zoned lands. The timing of the applications identified above is such that the city staff would have likely recommended denial of the proposed R-12 to C-G zone change to avoid loss of R-12 zoned land. However, the city's proposal combines the two zone change proposals so that a finding of no net loss of R-12 can be made through the legislative process.

The locational characteristics of the subject parcels otherwise support the comp plan amendments and zone changes. The property zoned C-P (Site A) fronts on a local and a neighborhood street and is adjacent to property zoned R-4.5 and low-density unincorporated Washington County. The adjacent lower class streets and low density residential use zone makes the property more suitable for medium residential use that forms a transition from the C-G zone to the south and the R-12 zone to the north.

Residential-zoned land adjacent to Pacific Hwy is rare in Tigard and is primarily associated with private and public school ownership and use, which is allowed conditionally in residential zones. The Tigard-Tualatin School District has identified the subject property (Site B) as surplus and intends to sell it for the highest best use. The proposed C-G zone is the dominant zone along Pacific Hwy (classified as Primary Arterial) and the existing zone of the adjacent parcels.

This action would result in a net increase of 0.17 acres zoned R-12.

Tom McGuire, Assistant Community Development Director, came up and explained in a bit more detail as to why the city is recommending this swap of zoning. "We've had a pre-app and applicant interested in this school district property, wanting to change that zone to C-G and, according to their market research, that was the best use that they were proposing for that property. We've also had two pre-application conferences for the other property – the commercially zoned property - to change that to R-12; but no application has come in. Given the

other applications that we've had with R-12 zone changes, we wanted to make sure that we are consistent in the findings that we're making on these quasi-judicial cases. Looking at the two sites - we saw that they are just about the same size. The neighborhood commercial is slightly larger and so, given we had interest from both property owners - we had development interests - we looked at that and we thought that it made the most sense to actually step in as a city and legislatively swap those zones. We've got the R-12 residential in a better place for residential zoning off of Hwy 99W and we've got commercial development on Hwy 99W, which makes more sense. Again, as Gary explained, there are two places on 99W zoned residential - the rest of it is all commercial. And those are in areas where there are schools, or were school property - and it was placed there through the conditional use process. So that's just a little more background as to why this decision was made, and why this is before you.

STAFF RECOMMENDATION

In Section VIII CONCLUSION, Staff recommends that the Planning Commission recommend approval of the proposed amendments to the Tigard City Council as determined through the public hearing process.

TESTIMONY IN FAVOR

Kelley Hossaini with Miller Nash 111 SW 5th Ave., Suite 3400, Portland 97204 - representing the Tigard Tualatin School District - said they are very pleased with staff being pro-active and taking this opportunity to put both of these pieces of property into zones that make more sense given where they are. The property on Hwy 99 has been owned by the School District since the 1940's - maybe even earlier. It was zoned residential to accommodate the district's use of the property. The property was declared as surplus in 2005 and put it on the market in 2006. There was some interest in the property from Commercial uses - no interest whatsoever from anyone wanting to do residential. The property was taken off the market due to the economic downturn. It was put back on the market a couple of years ago and a year ago to Leadership Circle interested in the property and actually wants to put a "Natural Grocer" there which I think would be great to have there and near the elementary school. If the zone change fails there will just be an incorrectly zoned piece of property that will sit there - not on the tax rolls, not providing jobs, taxes for the city - it would just sit there because we've never had any interest whatsoever in a residential use right there on 99. She thinks the zone change makes sense. As a reminder, this is a zone change only - there are no development applications before you. Any concern about the actual workings of what might go on the site - those would best be tackled when applications actually come in.

Matthew Zinzer - 720 SW Washington St., Suite 750, Portland 97205 works for Dowell, the planning and civil engineers for Leadership Circle, said they have been looking at this "Natural Grocer" and working well with the City of Tigard and ODOT to make sure the site is feasible and we are working diligently for that and we see no issues with the design continuing forward.

TESTIMONY IN OPPOSITION

Noreen Gibbons - 10730 SW 72nd Ave., Portland 97223 - said her property is just across the street from Site A. She bought her property because it was commercially zoned across the street and she didn't believe there would ever be a bunch of houses located there. That was her impetus to buy the property in the first place. She received a letter (notice) in the mail and also saw the sign that was put up on the corner advertising this meeting. She wanted to make a point to say that she

believes that is very inadequate notification. A day or two after the sign was put up it was curled and now, because of the rain and wind, it's down on the ground. She believes community input is important and she is interested in quality of life. She is concerned about additional traffic and believes this would cause more cars, more congestion. The character of the neighborhood does not match R-12; it will change the character of the neighborhood – and not for the better. Two and three story houses there will cause her to lose her view of Parrot Mountain and it will impact her quality of life.

Nancy Tracy – 7310 SW Pine St., Tigard 97223 – has lived there for 53 years. Her focus is the value of open space. She believes kids need physical exercise and could be playing out in that area. She believes the city is calling this a done deal. Tigard should make this land available for kids and parents and for walking. She thinks this is being rushed. There should be a moratorium. She would like the city to stop looking at open space as waste land.

Nathan Murdock – 7415 SW Spruce St. Tigard 97223 – had also submitted a letter which was an exhibit in the staff report. He said most of what he and his wife have to say are on the back of that letter. He is concerned about traffic with safety as the main concern. Parking is a problem now – it would only get worse. He is not opposed to residential but make it residential for what's there and ¼ acre lots should be a very minimum.

Ann Murdock – 7415 SW Pine St., Tigard 97223 – People are parking in front of her home now because of the property at the end of 74th where there are a lot of little homes – four feet apart – with families that have at least 2 cars apiece. It's a mess already; more houses would only add to that mess. She said she may not even be able to get into her driveway. She likes the idea of a park being there instead.

Jim Long – 10730 SW 72nd Ave., Tigard – spoke on behalf of at least four people so was allowed 15 minutes for testimony - he distributed written testimony. He said that he'd hit heavy traffic getting back and was sorry to have to submit a draft (**Exhibit A**). He noted that he is the elected chair of CPO-4M, the Citizens Participation Organization serving East Tigard – Metzger and Durham. He said the CPO had voted unanimously to endorse retaining the Commercial-Professional zoning for Site A (the property at the corner of 72nd Ave & SW Spruce Streets. He didn't like the file title – stating that it is a misnomer and really is misleading to citizens. It's not “Residential Preservation” – it's not commercial professional preservation – it's a swap. He hopes it's not a done deal. He stated that the staff report incorrectly states that the current zone does not allow residential use. He tried calling the number listed on the notice to get more information – it was supposed to be Gary Pagenstecher's number but it was somebody else and he said he never got a response back (Monday, December 7). He noted that Code 18.390.053 C2A – Goal 1 of the Comprehensive Plan states that citizens should be involved in every part of the process. He stated that he came in to the city on November 20 to ask to look at the documents and Gary said there weren't any. He doesn't believe that's transparency. Public notices didn't hold up to the weather. He had photos (shown on the written testimony) showing they had blown down on the ground – ineffective – unreadable. He believes this is a violation of due process 197.763. He said this hearing doesn't have the effect it should have. He doesn't like the zone swap being heard as a legislative process instead of a quasi-judicial process. He strongly believes this should be a quasi-judicial proceeding – it allows more citizen involvement and appeal that way. This seems to be highly irregular – it's like the fox watching the henhouse. He noted that he saw a “for sale” sign up on the property and wonders if this a done deal. He spoke about the land not being level – contrary to the staff report. He would like the city to leave this area as commercial.

Mr. Long stated that the staff report incorrectly states the site description of Site A stating that the current zone does not allow residential use. He said that is wrong because there are two houses on Site A now that have been lived in as residences for decades and that across 72nd there are residences that are zoned Commercial. He noted several things that the CPO would like to see: All documents that prompted the city to (inaudible) applicant for Comprehensive Plan Amendment in 2015-00005 zone change; the date the application was deemed complete; the affidavit of record; the staff report related to ordinance documents for 2006 annexation of what is now Site A; the housing strategies report by Angelo Planning Group that's referred to; 2010 Cogan Owens Cogan Economic Opportunities Analysis of 2011; the commercial inventory of the city; the residential inventory of the city; population projections; jobs projections; language in the 2006 annexation ordinance that justified the importance of Site A to be commercial-professional. Because of so many outstanding questions, they ask for a continuance for an opportunity to provide more evidence or for the Planning Commission to deny this. They would like the Planning Commission to deny the city Planning's Department request and maintain the existing zoning for Site A.

QUESTIONS FROM THE COMMISSIONERS

So are you asking to leave Site A the way it is? Commercial? Yes, leave it commercial. It's been for sale for years – maybe they're asking too much. I don't know, but it doesn't seem like there's justification to change it to 3-story high attached houses or whatever it would be – but R-12 would allow something like that, from what I understand.

REBUTTAL

Gary Pagenstecher, Associate Planner, said his comments (Exhibit A) were distributed to the Planning Commissioners and he doesn't have a copy. He said he doesn't have a rebuttal except that he'd heard issues with process and substance and that there are definite ideas the neighborhood has for this property. "The city has a different idea which we've adequately set forth in the staff report and it's consistent with the current property owner's interest. If the Planning Commission decides to continue, I'm sure I'll have a very specific rebuttal at that point."

PUBLIC HEARING CLOSED

No further testimony or questions from the audience are allowed.

DELIBERATION

There was some deliberation over who is for this swap of zones and who is not. The School District is wanting the swap as testified about earlier. Gary pointed out that the city had made a point of including the owners of Site A in the proposal and that they'd agreed with it. The owner is interested in having a residential zone there – they're interested in that because they realize the market is there for residential use but they hadn't found (that market) since it'd been annexed for commercial use. So the city and the current property owners have a consistent goal here – rezoning to a residential use.

MOTION

Commissioner Fitzgerald made the following motion: **“I move the Planning Commission forward a recommendation of approval to the City Council of application CPA2015-00005 and Zone Change ZON2015-00007 and adoption of the findings that have been received.”**

Commissioner Feeney seconded the motion.

A vote was taken and the motion passed 6 – 1; with Commissioner Lieuallen opposing.

MOTION PASSES - 6-1

President Rogers noted that the City Council makes the final decision and that this will go to City Council on January 12th.

OTHER BUSINESS

Tom McGuire reminded the commission that the next Planning Commission meeting will be held on January 11th and that it will be a training session.

ADJOURNMENT

President Rogers adjourned the meeting at 9:34 p.m.

Doreen Laughlin, Planning Commission Secretary

ATTEST: President Rogers